

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS DIRECTIVE	8010.3	6/5/07
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**PROCEDURES FOR EVIDENCE COLLECTION,
SAFEGUARDING AND DISPOSAL**

NOTE: DO NOT IMPLEMENT THIS DIRECTIVE UNTIL SEPTEMBER 5, 2007.

I. PURPOSE

A. This directive provides instructions for the Food Safety and Inspection Service (FSIS), Office of Program Evaluation, Enforcement and Review (OPEER), personnel to use when collecting, safeguarding and disposing of evidence. Investigators obtain evidence in the performance of surveillance, investigations, and other activities to support Agency decisions, investigative findings, and enforcement actions related to the statutes that FSIS enforces.

B. Section VIII. of this directive explains the different types of evidence that Investigators may collect. Section VIII. sets out the procedures for safeguarding evidence. Section IX. describes the methods for transferring and receiving evidence. Section X. explains the retention and disposal methods for evidence, Section XI. sets out OPEER personnel responsibilities.

II. CANCELLATIONS

FSIS Directive 8110.1, dated 10/22/91
FSIS Directive 8150.1, dated 4/5/90

III. RESERVED

IV. REFERENCES

Federal Meat Inspection Act (FMIA)
Poultry Products Inspection Act (PPIA)
Egg Products Inspection Act (EPIA)
Humane Methods of Slaughter Act
The Agricultural Marketing Act of 1946, as amended

9 CFR Sections 320.4, 381.146, 381.178 and 590.200
21 U.S.C. 460, 642, 1034 and 1040
FSIS Directive 7355.1, Use of Sample Seals for Laboratory Samples and Other Applications
FSIS Directive 8410.1, Detention and Seizure
FSIS Directive 10,230.2, Procedures for Collecting and Submitting Domestic Samples for Microbiological Analysis

V. FSIS FORMS ASSOCIATED WITH THIS DIRECTIVE

The following FSIS forms are located at Public Folders\All Public Folders\Agency Issuances\Forms\FSIS 8,000 SERIES:

FSIS Form 8000-15 (Photographic Log) - Section I identifies the subject or location photographed; Section II identifies the type of media and a specific description of each photograph; and Section III provides for a reference sketch of the area/items photographed.

FSIS Form 8000-16 (Evidence Log) - provides a detailed accounting of all evidentiary items collected in an investigation to monitor the control and accountability of these items.

FSIS Form 8000-17 (Evidence Receipt and Chain of Custody) - Section I identifies the evidentiary item collected; Section II tracks and maintains control and accountability for the item; and Section III documents the final disposal action of the item.

FSIS Form 8050-2 (Shipper's or Receiver's Certification) – is used when initial contact is made with the shipper or receiver of meat, poultry, or egg products that appear to be in violation of the Acts.

FSIS Form 8200-1 (Property Receipt) - is issued to the owner or custodian of "original property" when it is collected as evidence.

FSIS Form 8200-2 (Evidence Tag) – will be placed on physical objects to which a copy of the Evidence Receipt cannot be readily attached.

VI. BACKGROUND

OPEER personnel have responsibility to conduct surveillance, investigation, and other activities under the FMIA, PPIA, and EPIA. The collection and safeguarding of evidence is essential to support Agency decisions, investigative findings, and enforcement or other legal actions. Employees of other FSIS program areas (e.g., Office of International Affairs (OIA), Office of Field Operations (OFO)) may sometimes collect evidence while performing their official duties and should follow the procedures for the collection and safeguarding of evidence in accordance with this directive.

Evidence includes documents, photographs, investigative samples, and other facts or records collected during surveillances, investigations, or other activities. The safeguarding of evidence includes the steps needed to establish

legal integrity (i.e., identification, security, handling, and chain of custody) from the time of initial acquisition to final disposal. These steps prevent loss, unauthorized alteration, mishandling, or other actions that may affect the integrity of evidence. Chain of custody is the methodology used to maintain, track, and document control of all evidentiary items. Failure to safeguard evidence may affect the use of that evidence to support enforcement or legal actions. Evidence disposal addresses retention, disposal requirements, and procedures.

VII. EVIDENCE COLLECTION

Evidence may be used to support Agency decisions, to take enforcement actions, to support that a violation of law has occurred, to help obtain a ruling in a court of law, or for other purposes. When collecting evidence, OPEER personnel are to treat every item in the manner described in this Directive. The proper treatment and the preservation of evidence in the condition in which it was collected require that all authorized persons handle evidentiary items with care. Establishing and maintaining a chain of custody for all evidence collected is of utmost importance, and OPEER personnel will be accountable for maintaining chain of custody at each stage of evidence collection, safeguarding and disposal. The three general categories for evidence are:

A. Documentary Evidence (including statements)

Documents collected during surveillance, investigation, and other activities may be used to support Agency decisions, enforcement actions, and investigative findings or to support legal action in Federal, State, or local court. It is imperative that a Government witness (usually the person who collected the record) be able to testify as to where, when, and from whom the documents were collected, and to the fact that the copy is a true copy of the source document, based on his/her review of the source document.

1. Examples of documentary evidence include:

- a. sales invoices (as a means of identifying the seller or buyer, the amount, type, price, or date of the sale, and purchase or receipt of the product);
- b. receiving and storage records (as a means of identifying dates relevant to product storage, product condition or temperature, or storage temperature);
- c. transportation records (as a means of identifying the transporter, the location the product was shipped from, and the location to which the product was shipped);
- d. rodent and pest control service records;
- e. contracts;
- f. production records;

g. laboratory analysis records of product (analysis requested by a manufacturer, custodian, or owner);

h. records or reports documented by Federal, State, or local authorities of non-compliance, violations, or other issues;

i. statements (signed and unsigned);

j. Memorandums of Interview (MOI); and

k. diagrams, maps, charts, or graphs.

2. To collect documentary evidence, Investigators are to:

a. make an oral request to a responsible management official to examine records or documents;

b. examine and determine the specific records to collect;

c. obtain selected documentary evidence by:

i. requesting copies or the opportunity to make copies, or

ii. photographing each individual record or document; and

d. if original property records are collected for the purpose of copying or as actual evidence, complete and issue a Property Receipt. "Original property" is the actual record, document, or item in the possession of the owner or custodian.

NOTE: If access to facilities or records, or a request for copies of specific records, is denied, explain that FSIS statutes at 21 U.S.C. 460, 642, 1034 and 1040 provide Investigators and other duly-authorized representatives of the Secretary with access to the place of business and an opportunity to examine the facilities, inventory, and records thereof, and to copy all such records. If necessary, consider contacting, through supervisory channels, the Evaluation and Enforcement Division (EED), OPEER, to obtain an administrative subpoena to access the facility or collect copies of records.

3. To identify documentary evidence, Investigators are to:

a. place his/her initials and the date collected on the back of each document (e.g., CF mm/dd/yy);

b. sign and date each statement or MOI that he/she prepares; and

c. complete Section I of an Evidence Receipt.

NOTE: When possible, Investigators are to return original property to the owner and ensure that it is not altered in any way. The Property Receipt will serve to establish identity, along with the Evidence Receipt.

B. Photographic Evidence

Photographic evidence provides a visual depiction of product, facility conditions, or other observations. Photographs provide a means to visually bring the facility or location to the decisionmaker to support agency decisions, enforcement actions, and investigative findings. Photographs may also be used to record business and other documents, when necessary or efficient, in lieu of reproducing copies.

FSIS-issued digital cameras are to be used to collect photographic evidence. The following procedures also apply if it is necessary to use film or other photographic media to collect evidence:

1. Initiate and maintain a Photographic Log with a detailed description of each photograph;
 - a. when information is initially captured in regulatory notes, ensure that all pertinent information is transferred to the Photographic Log; and
 - b. the Photographic Log may include a sketch of the subject location. A sketch is a rough approximation of the scene that places items and locations in perspective to each other to supplement photographs;
2. Photograph the scene in a logical sequence whenever possible. A logical sequence provides an overview of the entire area, a medium “eye view” angle, close-up, and extreme close-up images of the subject. Avoid deleting any images in the sequence, even if poorly exposed;
3. photograph the entire scene in an UNDISTURBED state. Once this is accomplished, the investigation may continue;
4. Ensure conclusive photographic identification of the location, as appropriate, in both the exterior and interior sections of the facility (e.g. include an identifiable landmark, such as a street sign, in a photograph of the exterior of the facility);
5. Use a ruler or similar item somewhere in the close-up sequence to depict scale;
6. Create a master original copy of the digital photographs as soon as practical by transferring them to a once-writable CD (CD-R). Use a CD-R to ensure that the files cannot be modified and include the following information:
 - a. identify the master CD-R by using a compatible permanent marker that will not damage the CD; and
 - b. include the investigation file number, firm name, date, description of the subject matter, and Investigator’s initials;

7. Maintain the master CD-R under security as original evidence. Separate working copies should be made on the computer hard drive, a CD, or other storage media for examination, printing, or enhancement; and

8. Prepare and maintain an Evidence Receipt for the master CD-R.

C. Investigative Samples

1. Investigative sample collection is an important component of evidence collection. It includes the sampling inventory from persons or firms engaged in preparation or storage of meat, poultry, or egg products. It also includes collection and analysis of other materials, as necessary.

2. Samples are to be collected and submitted for laboratory analysis in a manner that safeguards the integrity of the evidentiary material, so that it is reliable as evidence to support agency decisions, enforcement actions, or investigative findings.

3. During the development of an investigative plan, or otherwise as appropriate, contact the FSIS laboratory, as needed, to discuss methods and types of samples to be collected and specific capabilities to conduct desired analysis. Examples of items that may be collected for analysis are:

- a. raw, in-process, or finished meat, poultry, or egg products;
- b. ingredients used in raw, in-process, or finished meat, poultry, or egg products;
- c. product packaging;
- d. rodent excreta, insects, apparent nesting, or vermin-gnawed material; or
- e. any extraneous materials.

4. Sample Selection

a. Investigative samples are collected to support Agency decisions, to take enforcement actions, to support that a violation of law has occurred, to help obtain a ruling in a court of law, or for other purposes.

b. Samples collected for laboratory analysis are to be collected from the location where the violative condition of the product is known or suspected to exist. Select the portions that will demonstrate the violative nature of the product.

c. There may be times when additional sampling is necessary to gain information or otherwise protect public health. In these situations Investigators are to obtain guidance from an appropriate source (e.g., Office of Public Health Science (OPHS), Office of Policy, Program, and Employee Development (OPPED)) in regards to specific techniques and sampling plans.

5. Sample Types

a. Intact sampling

Obtain a sample of an unopened packaged product. Collect intact samples if possible; or

b. Non-intact sampling

At times, intact sampling may not be practical because of the volume of product involved or the product's unpackaged state. If intact sampling is not feasible, non-intact samples are to be collected from bulk.

NOTE: When collecting non-intact samples, if microbiological analysis will be requested, utilize aseptic techniques as outlined in FSIS Directive 10,230.2, "Procedures for Collecting and Submitting Domestic Samples for Microbiological Analysis."

D. Sample Identity

Investigators are responsible for establishing and maintaining sample identity from the time of collection until receipt at the laboratory.

1. Establishing sample identity

To establish sample identity, Investigators are to photograph the product before and after sample collection and obtain identifying information (e.g., invoices, labels, or other product identification). As appropriate, document a signed statement, MOI, or Shipper's or Receiver's Certification from witnesses with direct knowledge of the sample identity.

2. Maintaining sample identity

To maintain sample identity, Investigators are to:

- a. seal all samples in accordance with FSIS Directive 7355.1, "Use of Sample Seals for Laboratory Samples and Other Applications";
- b. prepare an Evidence Receipt and submit it to the laboratory, along with the sample;
- c. include the sample serial number in the description of evidence;
- d. apply one of the associated bar-coded, pressure-sensitive Sample Seals (FSIS Form 7355-2B) to the Evidence Receipt;
- e. securely maintain all identifying information with the associated case file;

f. identify investigative samples as "STC-39" and provide the Region Code where the case file is documented:

Region Codes:

"W" Western

"SW" Southwest

"MW" Midwest

"SE" Southeast

"NE" Northeast

g. provide the producer's name, address, and establishment number;

h. provide a sample description, list of ingredients, and product codes (e.g., "sell by dates");

i. provide a name and address of the location where the sample was collected;

j. provide date, time, and quantity collected;

k. describe how the sample is identified and sealed (e.g., "collected by ____, on ____ (date), sealed with FSIS seal # ____");

l. provide the contact information for transmission of results to the appropriate Regional Manager (RM); and

m. describe the analysis requested.

3. Final disposition and disposal of samples

Because of the possibility of litigation, FSIS laboratories hold a portion of all investigative samples until notified by OPEER that the sample may be discarded. The RM or designee is to notify the appropriate laboratory when it is no longer necessary to hold a sample (based on consideration of the retention schedule in this directive). The notification to the laboratory needs to include the file number and associated sample serial numbers. The FSIS laboratory will dispose of the samples and complete Section III of the Evidence Receipt in accordance with this directive. The FSIS laboratory will then forward the completed Evidence Receipt to the RM who requested the disposal.

VIII. SAFEGUARDING EVIDENCE

Evidence is to have a documented and continuous chain of custody from the time of collection until the time it is admitted into court, or the case is resolved, and the evidence is no longer needed.

A. Evidence Security

1. Secure and maintain evidence in a controlled-access area (e.g., a locked room, a locked steel file cabinet, or other suitably-locked enclosure), accessible only to designated personnel.
2. Prepare an Evidence Log in electronic format for each case to maintain evidence inventories.
3. Generate periodic hard-copy inventory reports to monitor the control and accountability of evidence for each case.
4. Keep the number of people involved in handling evidence to a minimum (e.g., persons associated with the investigation).

B. Chain of Custody

1. Ensure that the transfer of evidence from one person to another is documented in Section II of the Evidence Receipt.
2. Ensure that evidence is always accompanied with its Evidence Receipt to provide identification at all times.
3. Ensure that the Evidence Receipt is filled out in a legible manner and with permanent ink.

IX. TRANSFERRING AND RECEIVING EVIDENCE

A. Transferring Evidence

1. To preserve the chain of custody when evidence is transferred in person, Investigators are to sign in Section II of the Evidence Receipt as the person releasing the evidence and identify the purpose of the change in custody.
2. To preserve the chain of custody when evidence is transferred by FedEx or Registered Mail, Investigators are to:
 - a. sign in Section II of the Evidence Receipt as the person releasing the evidence and identify the purpose of the change in custody;
 - b. enclose the evidence and Evidence Receipt in a suitable envelope or container marked to show that the contents is evidence, and that it is to be opened only by the identified recipient;
 - c. seal the envelope or container, place the word "Sealed" on the outside of the envelope or container, and initial and date the envelope or container;
 - d. prepare a transmittal letter or memorandum to include date, file number, description of the evidence, method of transportation, and tracking number;

e. e-mail or fax a copy of the transmittal letter or memorandum separately to the recipient to advise them of the transfer;

f. place the sealed envelope or container and transmittal letter in a larger envelope or container addressed to the recipient;

g. use FedEx to transfer evidence when possible and always request signature confirmation; and

h. if Registered Mail is used, always request a Return Receipt for signature confirmation.

B. Receiving Evidence

1. To preserve the chain of custody when evidence is received in person, Investigators are to sign in Section II of the Evidence Receipt as the person receiving the evidence.

2. To preserve the chain of custody when evidence is received by FedEx or Registered Mail, the receiving Investigators are to:

a. sign in Section II of the Evidence Receipt, as the person receiving the evidence;

b. provide a copy of the signed Evidence Receipt to the Investigator transferring/relinquishing the evidence to verify receipt;

c. write the word "Opened," with his/her initials and the date the envelope or container is opened on the inner envelope or container; and

d. maintain the original initialed envelope or container with the original evidence to provide proof of the chain of custody.

X. RETENTION AND DISPOSAL OF EVIDENCE

Retention schedules for evidence collected in the performance of surveillances, investigations, or other activities to support Agency decisions, enforcement actions, and investigative findings are as follows:

A. Evidence Retention

1. General correspondence and other records pertaining to surveillance activities or allegations that do not result in an investigation – destroy two (2) years after the end of the fiscal year in which the records were created.

2. Correspondence and other documents pertaining to product detentions that do not result in an investigation – destroy two (2) years after the end of the fiscal year in which the records were created.

3. Report of investigation file retention schedules:

- a. reports for cases that are prosecuted and result in a Conviction – destroy ten (10) years after the end of the fiscal year in which the case is closed;
- b. reports for cases that result in an Administrative Order – destroy one (1) year after the end of the fiscal year in which the Order terminates;
- c. reports of precedent-setting cases are to be maintained permanently. OPEER is to offer such reports to the National Archives and Records Administration ten (10) years after the end of the fiscal year in which the case is closed;
- d. reports of cases that result in an Injunction – destroy 1 year after the end of the fiscal year in which the Decree terminates;
- e. reports of cases that result in a Pretrial Diversion – destroy one (1) year after the end of the fiscal year in which the Agreement terminates;
- f. reports of cases that result in a company placed on Recordkeeping Requirements – destroy one (1) year after the end of the fiscal year in which the termination notice is issued; and
- g. reports of cases that are closed with a Notice of Warning (NOW), Letter of Information (LOI), or no action – destroy two (2) years after the end of the fiscal year in which the case was closed.

4. Investigative Sample Retention

- a. Investigative samples held at FSIS laboratories may be disposed of upon a determination that no action will be taken with regard to the sample.
- b. Investigative samples held at FSIS laboratories that support cases pending disposition may be disposed of subsequent to issuance of a closing action (e.g., NOW or LOI).
- c. Investigative samples held at FSIS laboratories that support cases pending litigation may be disposed of after receiving a Judgment or Order establishing that all legal proceedings or appeals have been exhausted.

B. Evidence Disposal

- 1. Evidence is to be disposed of in the following manner:
 - a. all evidence and all copies of documentary evidence, except for original evidence for which a Property Receipt was issued, are to be destroyed by shredding or incineration; and
 - b. return original property evidence for which a Property Receipt was issued to the property owner.

2. Document the disposal of all evidence in Section III of the Evidence Receipt and provide it to the Supervisory Investigator for verification of disposal.

XI. OPEER PERSONNEL RESPONSIBILITIES

OPEER personnel are to carry out the following responsibilities in accordance with the policies and procedures in this directive:

A. Investigator

1. Ensure the proper application of methods and procedures for collection and safeguarding of evidence in accordance with this directive during surveillance activities, investigations, or other activities to prevent evidence from loss, unauthorized alteration, mishandling, or other actions that may affect its integrity.

2. Initial and date the back of all evidentiary documents for evidence authentication, except original property, as previously defined in this directive.

3. Upon collection of all evidentiary items, prepare an Evidence Receipt to establish identification of the evidence, initiate the chain of custody, and provide for evidence authentication.

4. Complete and issue a Property Receipt when original property evidence is collected.

5. When the Evidence Receipt cannot easily accompany or be attached to the evidentiary item, identify the item with an Evidence Tag.

6. Make copies of documentary evidence to be used in the investigative report.

7. Document transfers of evidence in Section II of the Property Receipt to maintain the chain of custody.

8. Ensure that the methods and procedures set forth in this directive are followed during liaison activities with other Federal, State, and local law enforcement agencies in the collection, safeguarding and disposal of evidence, as applicable.

B. Evidence Officer (EO)

EO duties are assigned by the RM or designee. The EO may be the lead Investigator, another Investigator, a Supervisory Investigator, the Regional Manager, or other appropriate person. The EO is responsible for maintaining control and accountability of all evidentiary items for each assigned investigation by:

1. protecting all incoming evidentiary items from loss, unauthorized alteration, mishandling, or other actions that may affect their integrity;
2. preparing and maintaining an Evidence Log for each assigned investigation;
3. arranging for and documenting in Section II of the Evidence Receipt the receiving of evidence and subsequent transfer, release, or return of evidence for laboratory analysis, investigative use, use in court, or as otherwise necessary;
4. serving as liaison with other Federal, State, and local law enforcement agencies for transfers, releases, and returns of evidence for laboratory analysis, investigative use, or use in court;
5. conducting periodic inventory of evidence for each assigned investigation to monitor control of and ensure accountability for that evidence; and
6. arranging for the proper disposal of evidence in accordance with the schedules for evidence retention in this directive.

C. Regional Manager (RM)

1. Establish security for evidence (e.g., evidence room, locked cabinet), including limited access to secure areas.
2. Assign an EO for each investigation in the RM's area of responsibility.
3. Receive and provide FSIS laboratory analysis results to the lead Investigator, EO, or other appropriate person.
4. Conduct periodic reviews of evidence, evidence logs, and evidence receipts to monitor control of and accountability for evidence.
5. Ensure the timely and proper disposal of evidence in accordance with schedules and procedures in this directive, including notifying the appropriate laboratory when it is no longer necessary to hold investigative samples.

Refer questions to the Technical Service Center at 1-800-233-3935.



Assistant Administrator
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